IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 238 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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KIRANBHAI RAMJIBHAI MISTRY AND OTHERS - Applicants
Versus
STATE OF GUJARAT – Opponent

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Appearance :
MR KK PANDEY for the the Applicant.
MS NANDINI JOSHI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 04/05/2006 AND 05/05/2006

ORAL JUDGMENT

1. This Revision Application is directed against the judgment and order dated 23-02-2006 passed by learned Sessions Judge, Ahmedabad (Rural) in Sessions Case No. 61 of 2006, by which the application preferred by the

applicants for discharge under Section 227 of the Code of Criminal Procedure was rejected.

2.1 Mr. K. K. Pandey, learned Advocate for the applicants, submitted that the basic ingredients of Section 306 read with Section 506 (2) of the Code of Criminal Procedure were not satisfied in the case. Yet, the learned Judge has not discharged the applicants for the said offences. It is further submitted that the case is based on suicide note. On perusal of the suicide note, the involvement of the applicants is not *prima facie* established and, therefore, the learned Judge ought to have discharged both the applicants. The learned Judge has not taken into consideration various judgments cited by the learned Advocate at the bar and, therefore, it is a clear case of non-application of mind by the learned Judge. The learned Judge has not taken into account the statement of Rajeshbhai, Suryakantbhai Shah, Sanjaykumar Somabhai Prajapati, Nayankumar Popatlal Patel, Gamerbhai Motibhai Desai as well as Rakeshkumar Bhagwanbai Patel in proper perspective before rejecting the application preferred by the applicants. The learned Advocate submitted that if the *prima facie* case is not established against the applications, then the applicants

are entitled to be discharged as provided under Section 227 read with Section 228 of the Code of Criminal Procedure. Thus, on perusal of the material, which was produced before the learned Judge, there was no sufficient ground against the applicants and, therefore, it was a fit case of discharge of both the applicants and the order passed by the learned Judge be quashed and set aside.

2.2 The learned Judge has placed reliance on the following judgments in support of the submissions made at the bar:

(i) **Asha Shukla Vs. State of U. P. and Another, 2002 CRI. L. J. 2233 : 2002 (3) CRJ 559.**

This judgment is cited by the learned Advocate in support of the submission that the case before the Allahabad High Court was based on the suicide note and there was no material or evidence of record to infer that the accused, at any point of time, instigated the deceased or created such circumstances which compelled him

to end his life and *prima facie* no offence under Section 306 was made out against the accused. In this case, it was explained:

> *"From a combined reading of Sections 306 and 107 of the Penal Code, it is clear that the offence of abetment depends upon the intention of the person who instigates. Therefore, the gist of the offence of abetment is the intention to aid the commission of suicide. In the absence of necessary intention, no offence under this section can be said to have been made out. In order to bring the case within the four corners of abetment, there must be mens rea or community of intention. Without knowledge or intention there can be no abetment and the intention and knowledge must relate to the commission of suicide and assistance must be something proximate and something more than a mere passive acquiescence."*

Under these circumstances, the charge-sheet submitted against the accused as well as the proceedings initiated on the basis of the same were quashed and set aside.

(ii) **Ashish Saxena Vs. State of M. P., 2002 (6) CRJ 100.**

The learned Advocate cited this judgment in support of the submission that in

that case, the charge was quashed on the ground that there was no allegation that the petitioner had ever instigated, engaged, intentionally committed or so conspired that the deceased could commit suicide even though no suggestion to commit suicide was given by the petitioner.

(iii) **Sanju alias Sanjay Singh Sengar Vs. State of M. P., AIR 2002 SC 1998.**

This judgment is cited by the learned Advocate in support of the submission that when the basic ingredients of Section 306 IPC are not satisfied, the applicants cannot be charged for the same. The presence of *mens rea* is *sina qua non* with a view to invoke Section 306 IPC. The deceased committed suicide after two days of quarrel during which the accused used the words 'to go and die'. Thus, the suicide committed by the deceased was not the direct result of the quarrel. The suicide note left by the deceased showed that he was in great stress and depression. The statement given by the wife was

also to the effect that he was a frustrated man and was in habit of drinking. In view of the aforesaid facts and circumstances, the Apex Court quashed the charge-sheet framed under Section 306 against the accused as the ingredients of abetment were totally absent.

(iv) **Rameshbhai Ranchhodbhai And Another Vs. State of Gujarat, 1989 (2) GLR 834.**

The learned Advocate cited this judgment to stress that in order to constitute an abetment, the act or omission must be intentional and it must be done with the intent to facilitate the commission of an offence. It is further held that merely because a man is convicted of the offence under Section 498A, it does not follow that he has abetted the offence of committing suicide punishable under Section 306.

2.3 The learned Advocate submitted that in view of the ratio laid down in the above mentioned judgments and

since the prosecution has not *prima facie* indicated by producing the materials on the record of the case, the involvement of the applicants in the commission of the offence, the applicants are entitled to be discharged from the offences for which they were charge-sheeted and the order passed by the learned Judge requires to be quashed and set aside.

3. Ms. Nandini Joshi, learned Additional Public Prosecutor, submitted that the learned Judge has assigned the reasons in a detailed order passed below Exh. 4 wherein in paragraph-3, it has been stated by the learned Judge that there was *prima facie* case indicating the involvement of the applicants in the commission of offence. It is further held by the learned Judge that the scope of Sections 227 and 228 of the Code of Criminal Procedure is very limited and the criteria to form the charge is whether the evidentiary material on record, if generally accepted, would personally connect the accused with the crime. Nothing more need to be inquired into. Thus, it is submitted by the learned Additional Public Prosecutor that even the suicide note along with other documents *prima facie* indicate the involvement of the applicants in the commission of offence and, therefore,

the learned Judge has rightly rejected the application for discharging the applicants under Sections 227 and 228 of the Code of Criminal Procedure.

4. Taking into consideration the submissions canvassed by the learned Counsels of both the sides and the averments made by in the application, the learned Judge has passed the order below Exh. 4, by which the application for the discharge of the applicants under Sections 227 and 228 of the Code of Criminal Procedure was rejected. The learned Judge, on perusal of the order, has clearly assigned the reasons that *prima facie*, there was enough material available against the applicants to attract the provisions of Section 306 IPC. The suicide note along with the statements of the witnesses *prima facie* indicates the involvement of the applicants in the commission. While deciding the application under Sections 227 and 228 of the Code of Criminal Procedure, the learned Judge has to consider only the *prima facie* case and if there is sufficient ground for proceeding with the case, then he can as well reject the application preferred under Sections 227 and 228 of the Code of Criminal Procedure. In order to determine whether there is sufficient ground for

proceeding against an accused, the Court is having wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible. The learned Judge has to only see as to whether *prima facie* case exists and he is not to take into consideration as to whether the case is beyond doubt. The strict standards of the proof while evaluating the material to ascertain whether there is *prima facie* case exists against the accused is also not required to be applied.

5. In view of the aforesaid facts and circumstances, the learned Judge, in my view, has taken into consideration the material, which was placed before him, and the prima case against the applicants in deciding the application under Sections 227 and 228 of the Code of Criminal Procedure. As no error is committed by the learned Judge in rejecting the application under Sections 227 and 228 of the Code of Criminal Procedure, the same, in my view, would not warrant interference under revision preferred under Section 397 read with Section 401 of the Code of Criminal Procedure. The judgments cited by the learned Advocate are carefully

perused by me and there is no dispute about the ratio or proposition laid down in these judgments. However, taking into consideration the reasoning given by the learned Judge, I do no find any merit in the Revision Application preferred by the applicants and the same is liable to be rejected.

6. For the foregoing discussion, the application is rejected. Rule is discharged.

[H. B. ANTANI, J.]

/shamnath